of seizure and sale on attachment and execution.

3. "That the proceeds of a seat, in the hands of the exchange or its officers, are capable of being reached, after the claims of members have been satisfied, to the same extent, and in the same manner, as any other money or property of a debtor.

4. "That a person owning a seat in the exchange, can be compelled, by proceedings subsequent to execution, or under the direction of a receiver, to sell his seat to a person acceptable to the exchange, and devote the proceeds to the satisfaction of his judgment debts."

As to the point discussed in the principal case the cases do not seem to make any distinction, and there does not seem to be any distinction in principle between unincorporated boards, and those which have been incorporated, so long as the objects of the boards and their rules and regulations are the same; and tested by the cases above cited, the ruling in the principal case would seem to be correct in principle, and well grounded on authority.

MARSHALL D. EWELL.

Chicago.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ARKANSAS.[2]

SUPREME COURT OF IOWA.[3]

SUPREME JUDICIAL COURT OF MAINE.[4]

SUPREME COURT OF OHIO.[5]

SUPREME COURT OF WISCONSIN.[6]

AGENT.

Promissory Note—Payment.—Authority to sell property as agent, and take a note therefor in the name of the principal, does not include authority to receive payment of the note after it has been delivered to the principal: *Draper* v. *Rice*, 56 Iowa.

ATTACHMENT. See *Garnishment.*

ATTORNEY.

Authority to release Attachment.—An attorney-at-law, having control of a suit, has control of the remedy and the proceedings connected therewith, and may release an attachment of real or personal property, and such release will bind his client as between such client and a party

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1881. The cases will probably appear in 14 or 15 Otto.

[2] From B. D. Turner, Esq., Reporter; to appear in 37 Arkansas Reports.

[3] From Hon. John S. Runnells, Reporter; to appear in 56 Iowa Reports.

[4] From J. W. Spaulding, Esq., Reporter; to appear in 73 Maine Reports.

[5] From E. L. DeWitt, Esq., Reporter; to appear in 37 or 38 Ohio St. Reports.

[6] From Hon. O. M. Conover, Reporter; to appear in 54 Wisconsin Reports.

purchasing or taking a mortgage of such released estate on the strength of such release: *Benson* v. *Carr*, 73 Me.

BILLS AND NOTES. See *Agent; Surety.*

Evidence to vary Terms of—Payment.—The maker of a note cannot show, as a defence thereto, that he has paid it to another than the payee, in accordance with a contemporaneous parol agreement, differing in its terms from the note: *Draper* v. *Rice*, 56 Iowa.

Holder as Collateral—Rights against Accommodation Endorser.—One not induced by fraud who endorses a negotiable promissory note owned by another, for his accommodation, without restriction as to its use, is liable to an endorsee who receives it in good faith from the owner, before due, as collateral security for an antecedent debt of such owner, although there be no other consideration for giving such collateral: *Pitts* v. *Foglesong*, 37 or 38 Ohio St.

Boxborough *v.* Messick, 6 Ohio St. 448, distinguished: *Id.*

BOND. See *Officer.*

CONSTITUTIONAL LAW. See *Taxation.*

Canal—Lease of Surplus Water—Right of State to Abandon—Obligation of Contracts.—By the laws of a state the board of public works were authorized to lease, for hydraulic purposes, the surplus water in canals, reserving in each lease the right to resume the privilege when deemed necessary for the purposes of navigation. The board leased certain water privileges in a canal running through a city. Subsequently a statute was passed granting a portion of the canal to the city, and virtually abandoning it as a canal. In a suit against the city by the lessees of the water privileges for a destruction of their supply, *Held*, that after the canal was no longer needed for navigation the state was not bound to maintain it for the benefit of the lessees of the water, and that the statute abandoning it was, therefore, not within the constitutional prohibition against impairing the obligation of contracts, but was valid: *Fox* v. *City of Cincinnati*, S. C. U. S., Oct. Term 1881.

License Law—Discrimination against other States.—The Statute of Arkansas (Gantt's Dig., sect. 1876, *et seq.*) defining peddlers and imposing license on them, discriminates in favor of the products and manufactures of this state, and against those of other states, and is, therefore, unconstitutional and void: *State* v. *McGinnis*, 37 Ark.

Power of Legislature to change County Limits—Apportionment of Indebtedness.—The legislature may, according to its own views of public policy and convenience, enlarge or diminish the powers of counties, and may extend, limit or change their boundaries, without the consent of the inhabitants, except that by the Constitution, "no part of a county shall be taken off to form a new county without the consent of a majority of the voters in such part proposed to be taken off:" *Pulaski County* v. *County Judge of Saline County*, 37 Ark.

The legislature may require of a county, to which a part of another territory has been attached, payment of part of the latter's indebtedness, and may direct how the debt shall be ascertained; and when the act

designates the time for the adjustment of the amount by the County Court from which the territory is severed, the other county to which it is attached has notice, and may contest the correctness of the adjustment, and appeal it to the Circuit Court: *Id.*

Criminal Law.

Discretion of Court in rejecting Juror—Accomplice—Declarations of Wife of Co-defendant—Retiring Jury.—It is the province of the Circuit Court, in the exercise of a sound discretion, to determine the qualification of a juror challenged for bias, and this court will not say that the discretion is abused by admitting a juror who says, upon examination, that he has formed an opinion of the guilt or innocence of the accused, upon rumor, that will require evidence to remove, but that he has no bias or prejudice against him, and can try the case impartially and without prejudice to his rights: *Casey* v. *The State*, 37 Ark.

An accomplice who is not indicted, or is separately indicted, is a competent witness, though convicted, if he has not been sentenced: *Id.*

The declarations of an alleged accomplice, in the absence of the defendant, are not admissible against him until other evidence than that of the principal is produced, implicating the declarant in the offence: *Id.*

In this state the wife of one who is jointly indicted with the defendant on trial is not a competent witness for him: *Id.*

Requiring the jury to retire during the argument of instructions is a matter of practice within the discretion of the court, and is not objectionable: *Id.*

Bribery—Common-Law Offence—Attempt to influence Elector.—Bribery at a municipal election is a misdemeanor punishable by the common law of this state: *State* v. *Jackson*, 73 Me.

An attempt to bribe or corruptly influence the elector, although not accomplished, will subject the offender to an indictment: *Id.*

Wilfully and unlawfully attempting to influence an elector to give in his ballot at such election, by offering or paying him money therefor, is a crime at common law in this state: *Id.*

Damages.

Railroad—Wrongful Ejectment of Passenger—Action for Damages in Tort—Proximate Consequences.—An action for damages for the sickness and bodily and mental suffering of plaintiff and wife caused by their ejection from the cars of defendants' railroad before reaching the destination to which they were travelling as passengers, is in tort and not upon contract, and defendant is liable for all the injuries resulting directly from his wrongful act: *Brown* v. *C. M. & St. Paul Railway*, 54 Wis.

The direct or proximate consequences of a wrongful act are those which occur without any intervening independent cause; and the fact that the injuries chiefly complained of were caused immediately by the act of plaintiffs in walking from the place where they left the cars to the next station will not relieve defendant from liability therefor, where it appears that plaintiffs' act in so walking was rendered apparently necessary by defendant's wrongful act, and was not negligent: *Id.*

Action for Personal Injuries—Profits from Business—In an action for

personal injuries to the plaintiff, which disqualified him to give his personal attention to the business which he had previously carried on, where such business consisted in the manufacture and sale of patented and other machines, it was error to admit proof of the average profits of his business while he carried it on, as a basis for estimating his damages, such a basis being of too uncertain and speculative a character: *Bierbach* v. *Goodyear Rubber Co.*, 54 Wis.

Deed.

Delivery to Husband of Grantee.—A deed to property delivered to the husband of the grantee, with the intention on the part of the grantor that such delivery should pass the title, was held to divest him of the title and vest it in the grantee, although it was made without her knowledge and was not delivered to her by her husband, but came into her possession some months afterward: *Parker* v. *Parker*, 56 Iowa.

Eminent Domain. See *Waters and Watercourses.*

Equity.

Master of Vessel—Sailing on Shares—Account.—A bill in equity by the owners of a vessel against the master who had taken her on shares cannot be maintained when no discovery is sought for and the prayer is to render an account of her earnings: *Bird* v. *Hall*, 73 Me.

The plaintiffs in such case have an ample remedy at law: *Id.*

Errors and Appeals.

Amount in Controversy—Contest between Creditors over a Fund—Jurisdiction determined by aggregate Shares of Contesting Creditors.—Upon an appeal from a decree dismissing a bill filed by certain creditors to set aside a deed under which another creditor claimed a fund in court, if it appears that the creditors filing the bill represent no one but themselves; that in the event of success they alone can take advantage of the decree, and that, if successful, their aggregate shares in the fund would amount to less than five thousand dollars, the appeal will be dismissed for want of jurisdiction, notwithstanding that both the fund and the aggregate amount of claims provable against it are more than that amount: *Chatfield* v. *Boyle*, S. C. U. S., Oct. Term 1881.

Death of Appellant—Effect of.—A judgment of reversal is effective notwithstanding the death of the plaintiff in error during the pendency of proceedings in error. Such judgment takes effect, by relation, as of the date of the commencement of the proceeding in error; and it is competent for the court, to which the cause is remanded for a new trial, to order a revivor of the action in the name of the proper representative of the deceased party: *Williams* v. *Englebrecht*, 37 or 38 Ohio St.

Estoppel.

Admission of Indebtedness—Garnishment.—The mere facts that during the pendency of an action for a money judgment by plaintiffs against T., B., knowing that plaintiffs were making the inquiry with a view to determining whether they should garnishee him, admitted an

indebtedness on his part to T., and that plaintiffs were thus induced to commence garnishment proceedings against him, does not estop him from afterwards denying the existence of such indebtedness; though such admission is evidence for the jury as to the fact of indebtedness: *Warder* v. *Baker*, 54 Wis.

EXECUTORS AND ADMINISTRATORS. See *Garnishment.*

GARNISHMENT.

Executor or Administrator.—An executor or administrator is not subject to garnishment before a final order for the distribution of the estate is made; and where he is summoned as garnishee before the making of such order, judgment cannot be taken against him therein after the order is made. Whether he is subject to garnishment after such final order, is not here determined: *Case Threshing Machine Co.* v. *Miracle*, 54 Wis.

Jurisdiction—Non-Resident Defendant—Indebtedness of Garnishee subsequent to Attachment.—Where in an action against a non-resident defendant, which was commenced by attachment served by garnisheeing a supposed debtor of the defendant, and the defendant was served by publication only, the answer of the garnishee showed that it was not indebted to the defendant at the time of the service of the attachment, it was held that the court acquired no jurisdiction to proceed in the action, though such answer disclosed an indebtedness to the defendant at the time it was made: *Morris* v. *The Union Pacific Railroad Co.*, 56 Iowa.

GIFT.

Deposit in Savings Bank in Name of Another.—When A. having seventeen hundred dollars in a savings bank, made a further deposit in the name of B. without his knowledge, of two thousand dollars, retaining the pass-book till death, and drawing the dividends and such portions of the principal for her own use as she chose; *Held*, 1, that the title to the deposits remained in the depositor and subject to her control; 2, that if the deposit was in trust, that B. was trustee for the depositor and not *cestui que trust*: *Northrop* v. *Hale*, 73 Me.

INSURANCE.

Life Policy—Forfeiture in case of Travel beyond stipulated Limits—Waiver.—A. obtained a policy of life insurance containing a condition of forfeiture in case he should travel south of a certain parallel of latitude. On September 26th 1878, he went to a city south of such limit, and while there, died October 15th 1878. On October 17th 1878, his brother-in-law, in ignorance of his death and at the suggestion of the local agent of the insurance company, paid to such agent $20 for a southern permit for A. and received a receipt therefor. The local agent forwarded the money to the state agents of the company, who acknowledged its receipt. Shortly afterwards and before any permit had been actually issued, news of A.'s death was received. Afterwards, the local agent tendered back the $20 to the brother-in-law, who refused to receive it. *Held*, that the receipt by the local agent of the money for a permit was not under the circumstances a waiver by the company of the for-

feiture. *Bennecke* v. *Conn. Mut. Ins. Co.*, S. C. U. S., October Term 1881.

Master and Servant.

Railroad—Negligence—Examination of Car received from other Road.—One railroad company receiving a loaded car from another, and running it upon its own road, is not bound for the protection of its employees to repeat the tests which are proper to be used in the original construction of such a car, but may assume that all parts of the car which *appear* to be in good condition are so in fact: *Ballou* v. *C. & N. W. Railway Co.*, 54 Wis.

Mechanic's Lien.

Who entitled to—Implied Contract for Labor—Overseer.—One who performs labor for a contractor in the erection of a building may establish a lien against the building therefor, though no express contract for payment was made: *Foerder* v. *Wesner*, 56 Iowa.

The fact that one who performs labor on a building also acts as overseer of other workmen will not defeat his right to a mechanic's lien: *Id.*

Mortgage. See *Trover.*

Railroad Mortgage—Foreclosure Suit—Decree—Finding as to amount due—Stipulation as to Request of Bondholders.—In a suit for foreclosure it is not necessary that there should be two decrees, one finding the amount due and fixing a day for payment, and the other finding default in such payment and ordering a sale. All these matters may be embraced in one decree: *Chicago, D. & V. Railroad* v. *Fosdick*, S. C. U. S., Oct. Term 1881.

Such a decree should declare the fact and nature of the default on which the bill is founded, the amount due, a time within which that amount must be paid, and a direction that in case of default in such payment the property shall be sold: *Id.*

In such decree the finding of the amount due is the foundation of the mortgagee's right to further proceed, and a substantial error in that finding will vitiate all subsequent proceedings: *Id.*

A railroad mortgage provided that after the principal of the bonds had been declared by the trustee to have become due, the trustees should, "upon the written request of the holders of a majority of the said bonds," proceed to collect the principal and interest by foreclosure. *Held*, that without such written request of the bondholders the trustees had no power to proceed to foreclose the mortgage: *Id.*

Negligence. See *Railroad.*

Officer.

Bond—Duties added after Execution.—An official bond conditioned for the faithful discharge of the duties of an office "according to law," embraces duties required by laws in force during the terms of the officer, whether enacted before or after the execution of the bond: *Dawson* v. *The State*, 37 or 38 Ohio St.

King *v.* Nichols, 16 Ohio St. 80, approved: *Id.*

PARTNERSHIP.

Sale of entire Business by one Partner—Constructive Trust.—Though a partner may sell a part or the whole of any of the effects of the firm which are intended for sale if the sale be within the scope of the partnership business, yet he cannot, without the consent of the other partners, dispose of the partnership business itself, nor of all the effects, including the means of carrying it on. This is without the range of his implied powers, and contrary to the objects and designs of the association: *Drake* v. *Thyng*, 37 Ark.

When a partner, in the absence of his copartner who has furnished the capital, sells the partnership effects and business at a sacrifice, to parties having knowledge of the interest of the copartner, and when there is no necessity for the sale, a constructive trust will attach to the property in the hands of the purchasers, and as trustees they and the vendor will be held to a rigid accountability to the copartner: *Id.*

PLEADING.

Declaration—Sale—Payment in Goods.—When goods are sold to be paid for wholly or in part by other goods, or in labor, or otherwise than in money, an action to recover the same must be by special count on the agreement, and for a breach of it, and not for goods sold and delivered: *Slayton* v. *McDonald*, 73 Me.

PRACTICE.

Action of Tort—Joinder of Defendants—Verdict against one alone.—In an action to recover for a tort, in which two are joined as defendants, and it is alleged that the tort was committed by them jointly, the jury may find that it was committed by one defendant alone, and judgment may properly be rendered against him therefor: *Boswell* v. *Gates*, 56 Iowa.

RAILROAD. See *Master and Servant; Mortgage.*

Negligence—Presumption—Evidence.—In an action against a railroad company to recover damages for killing live stock, the plaintiff must prove, affirmatively, that want of ordinary care on the part of the company or its employees caused the injury: *Pitts. C. & St. Louis Railway Co.* v. *McMillan*, 37 or 38 Ohio St.

Such inference does not arise from the mere fact that the animal was killed: *Id.*

Occupation of Street—Compensation to Property Owners—Injunction.—Where the construction of a railroad in a street of a city, will work material injury to the abutting property, such construction may be enjoined, at the suit of the owners, until the right to construct such road in the street shall first be acquired, under proceedings instituted against such owners as required by law for the appropriation of private property: *Scioto Valley Railroad* v. *Lawrence*, 37 or 38 Ohio St.

In such case it is immaterial whether the fee is vested in the city or in the abutting owners, so long as it is held upon the same defined uses: *Id.*

Railway Co. *v.* Cumminsville, 14 Ohio St. 524, approved: *Id.*

SHIPPING. See *Equity.*

STATUTE OF FRAUDS.

Assumption by Partner of Debts due the Firm.—If, upon the close of a partnership, one partner takes to his own use a portion of the assets, whether choses in action or anything else, on an oral agreement to account to his copartners for a definite share, it is a separate and direct agreement, on a new consideration, and not within the Statute of Frauds: *Conger* v. *Cotton*, 37 Ark.

STREET. See *Railroad.*

SURETY.

Addition of other Sureties—Discharge of Liability.—Where, after a note has been signed by the principal maker and a surety, and delivered to the payee, it is signed by others as sureties, without the knowledge and consent of the one first signing, he is thereby discharged from liability thereon: *Berryman* v. *Manker*, 56 Iowa.

TAXATION.

Federal Tax—Illegal Assessment—Refunding—Court of Claims—Limitation of Time.—The court of claims has jurisdiction of a suit to recover from the government the amount of a claim for taxes illegally collected, which claim had been duly presented to the commissioner of internal revenue and allowed under sects. 3220 and 3228 Rev. Stat.: *United States* v. *Real Estate Saving Bank*, S. C. U. S., Oct. Term 1881.

The regulations of the secretary of the treasury, made in accordance with sect. 3220, having prescribed that claims for the refunding of taxes should be presented through the collectors of the respective districts, a claim presented to such collector within the period limited by sect. 3228 for presentation, is in time although not forwarded by the collector to the commissioner of internal revenue until after such period: *Id.*

Constitutional Law — Uniformity — Decisions of Tax Officers — Fraudulent Discrimination.—Statutory provisions, whereby different classes of property are listed and valued for taxation in and by different modes and agencies, are not necessarily in conflict with the provisions of the Constitution which require all property to be taxed by a uniform rule, and according to its true value in money: *Wagoner* v. *Loomis*, 37 or 38 Ohio St.

As a general rule, the decisions of officers and tribunals specially created and charged, in tax laws, with the duty of valuing property for taxation and equalizing such valuations, are final and conclusive: *Id.*

Even in case of fraudulent discrimination equity will not relieve a taxpayer whose property is not assessed in a greater amount than would have been imposed upon it, in case all the taxable property of the state had in fact been assessed by a uniform rule and according to its true value in money: *Id.*

TORT. See *Practice.*

TRESPASS.

Parol License—How Pleaded—Revocation.—In an action for a trespass to land, if defendant relies upon a license, it must be specially pleaded, and cannot be given in evidence under the general issue; but

it is sufficient if the facts constituting the license are averred: *Lockhart* v. *Geir*, 54 Wis.

A mere license may be by parol, and is a defence as to all acts embraced within its terms, committed before its revocation; but the commencement of an action for damages by the licensor is a revocation: *Id.*

TRIAL. See *Practice.*

Charge—Binding Instruction—When Allowable.—Even in a case where it would not be improper for the court, in the exercise of its discretion to leave the case to the jury, it may give a binding instruction to find for defendant, if it is satisfied that conceding all the inferences which the jury could justifiably draw from the testimony, the evidence is not sufficient to warrant a verdict for plaintiff: *Stewart* v. *Town of Lansing*, S. C. U. S., Oct. Term 1881.

Charge—Weight of Number of Witnesses.—It is error to charge the jury that, "if the witnesses are equally credible, and they so present themselves to the mind of the jury, then the greater number of witnesses on one side or the other would be entitled to the greater weight:" *Bierbach* v. *Goodyear Rubber Co.*, 54 Wis.

TROVER.

Mortgage—Wrongful refusal to Assign.—Where the mortgagee assigned a mortgage of real estate and the notes secured thereby, to secure a loan to him from the assignee, payable at a specified time, and the loan not being repaid on time, the assignee foreclosed the mortgage, and after such foreclosure was perfected, the assignor tendered the amount due, and demanded the notes and mortgage which the assignee refused to assign or transfer. *Held*, that trover would not lie for the same: *Rice* v. *Dillingham*, 73 Me.

Whatever remedy the assignor may have is in equity: *Id.*

TRUST. See *Gift.*

VENDOR AND VENDEE.

Vendor's Lien—Land Sold for Merchandise.—Where one sells land for cotton, to be afterwards delivered, he has no lien on the land for performance. The non-delivery creates no debt, but only an injury sounding in damages, which equity will not liquidate, and then declare a lien to pay them: *Harris* v. *Hanie*, 37 Ark.

Assignee of Contract—Personal Liability of.—The assignee of a contract for the sale of real estate, by accepting the assignment, becomes a party to the contract, and personally liable thereon for the purchase-money then unpaid: *Wightman* v. *Spofford*, 56 Iowa.

WATERS AND WATERCOURSES. See *Constitutional Law.*

Riparian Owners—Damage to by Improvement of Navigation.—Riparian owners on a navigable stream cannot recover damages for a diversion of the water by the state, or by a corporation acting by authority of the state for the improvement of the navigation. *Arimond* v. *Green Bay & M. Canal Co.*, 31 Wis., 316, and *Delaplaine* v. *C. & N. W. Railway Co.* 42 Wis., 230, distinguished: *Black Rw. Imp. Co.* v. *La. C. Booming & Trans. Co.*, 54 Wis.